

December 20, 2018

Mr. Devin Leary
Human and Rohde, Inc.
512 Virginia Avenue
Towson, MD 21286

Re: Jindra Property
Forest Conservation Variance
Tracking # 02-18-2876

Dear Mr. Leary:

A request for a variance from the Baltimore County Code Article 33, Title 6 Forest Conservation was received by this Department of Environmental Protection and Sustainability (EPS) on October 22, 2018. This request seeks a variance to remove one specimen tree in conjunction with the construction of a new home in a recent minor subdivision. There are a total of sixteen specimen trees on the property. The single specimen tree proposed for removal is a 51-inch DBH red oak that is in poor condition and located within a forest in a Forest Buffer and Forest Conservation Easement. The tree was originally shown to be retained on the Forest Conservation Plan, but it has become a potential hazard due to its declining health and close proximity to the proposed house and existing utility lines. As a result, EPS gave permission to remove the tree. EPS previously approved a specimen tree variance on June 27, 2018 to allow the removal of three other specimen trees.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of this property. The petitioner is proposing the construction of a new house as part of a two lot minor subdivision. Impacts to the single specimen tree could be avoided with the construction of a smaller house or moving the proposed house closer to the existing house. However, given the potential hazard the tree creates, redesigning the new house to avoid a dying tree is not practical. Nevertheless, since it is possible to develop the property without impacting the specimen tree and a house already exists on the property, compliance with the Forest Conservation Law will not deprive the petitioner of all beneficial use of the property. Consequently, we find that this criterion has been not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The need to remove the specimen tree is a result of its declining condition and close proximity to the proposed house and existing utility lines. These circumstances are unique to this property and not the general conditions in the neighborhood. Therefore, we find the second criterion has been met.

The third criterion (Subsection 33-6-116(d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The other lots in this neighborhood were developed with similar houses to the proposed dwelling. Therefore, we find that granting the variance will not alter the essential character of the neighborhood; thus, this criterion has been met.

The fourth criterion (Subsection 33-6-116(e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. There is a stream and associated wetlands along the rear property line. The wooded area adjacent to the stream which includes the remaining 15 specimen trees will be protected in a Forest Buffer and Forest Conservation Easement. In addition, storm water management (SWM) will be provided in accordance with Baltimore County's SWM Law. Therefore, we find that granting the variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116(e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The variance request arises from the location of the specimen tree on the property and the hazard it poses. In order to protect the majority of the specimen trees and avoid an area of concentrated drainage, the proposed house will be located along a side slope. The large red oak identified for removal was in poor health prior to the subdivision and is located approximately 55 feet from the proposed house. Therefore, the petitioner has taken no actions necessitating this variance prior to its request, and this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. While four specimen trees have been or will be removed, the majority of the specimen trees on the property will remain. The remaining 15 specimen trees will be protected in a Forest Buffer and Forest Conservation Easement. In addition to protecting the remaining specimen trees, the proposed conservation easement will protect most of the higher quality mid-successional forest on site comprised mostly of large oaks and beech. Given that the property owner has limited their proposed tree removal to only four of the 19 specimen trees and the remaining specimen trees will be protected in a conservation easement, we find that this variance request is consistent with the spirit and intent of Article 33 of the Baltimore County Code. Therefore, this criterion has been met.

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Based on our review, this Department finds that all required criteria have been met. Therefore, the requested variance is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. No mitigation is required for the removal of the specimen tree because the tree is in poor condition.

2. All plans prepared for Jindra Property must include the following note:

“A special variance to the Forest Conservation Law was granted by Baltimore County Department of Environmental Protection & Sustainability on December 20, 2018 to allow the removal of one additional specimen beyond the June 27, 2018 variance. No mitigation is required for the removal of this specimen tree since it is in poor condition.”

3. This variance approval does not exempt future development activities or future removal of specimen trees at this site from compliance with Baltimore County’s Forest Conservation Law.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement on the following page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If there are any questions regarding this correspondence, please contact Mr. Gris Batchelder at (410) 887-3980.

Sincerely,

David V. Lykens
Acting Director

DVL/cgb

c. Marian Honeczy, Maryland Department of Natural Resources

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I/we agree to the above conditions to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

Responsible Party's Signature

Date

Responsible Party's Printed Name